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Subject: INSIDEEPA: As Democrats Stall Nominees, Water Office Pick Said To Weigh Withdrawal

Daily News

As Democrats Stall Nominees, Water Office Pick Said To Weigh Withdrawal

Posted: June 27, 2014

Senate Democratic leaders are delaying floor votes on pending EPA and other environmental nominees because they lack the votes from vulnerable Democrats who are unwilling to back the nominees so soon before the midterm elections in the face of Republicans' push to make any vote a referendum on agency climate, clean water and other policies, congressional and other sources say.

The situation has reportedly led Ken Kopocis, now in his third year awaiting confirmation as EPA's water chief, to consider withdrawing his nomination entirely, an informed source says. "I was told that he was trying to make a decision as to whether it was worth staying or just leaving," the source says.

Kopocis did not return calls seeking comment but his withdrawal would create problems for EPA as the current acting head of the water office, Nancy Stoner, is limited by federal law in how much longer she can continue to serve in that role.

While Republicans have used procedural tactics to slow confirmations for some administration nominees since Democrats eliminated the filibuster for most executive nominees last November, a Senate GOP staffer told *Inside EPA* June 24 that the party is not blocking the environmental nominees from coming to the floor for a vote.

The source said Democrats could vote on long-pending nominees like Kopocis at their will. If Democrats complain about EPA nominees not reaching the floor after clearing a committee vote, "they're complaining about themselves," the GOP staffer says. "We have zero control."

A spokesman for Senate Majority Leader Harry Reid (D-NV) did not deny that Democrats are delaying floor votes but sought to blame Republicans for the holdup. "Unfortunately, thanks to obstruction from Senate Republicans, [the nominees] are stuck in the executive calendar backlog of more than 130 nominees. These nominations are a priority and we will continue working to find a way to advance these nominations soon."

Asked for comment June 24, Sen. Ben Cardin (D-MD) said he does not know if Democrats will bring EPA nominees to the floor this summer, "but I hope we do."

President Obama first nominated Kopocis to be assistant administrator for water in June 2011. Since then, he has thrice cleared the environment committee -- once in 2011, in 2013 and again on Feb. 6 of this year -- but the full Senate has yet to vote on his confirmation.

Under federal law, if Kopocis' nomination is withdrawn, whether voluntarily or because the Senate votes against it or fails to act by the end of the 113th Congress, Stoner will be forced to step down no more than 210 days later, some time around Aug. 1, 2015, leaving the agency with even less political muscle behind the jurisdiction rule than it currently enjoys.

The Federal Vacancies Reform Act of 1998 allows an acting official to serve indefinitely as long as a nominee is pending, but according to 1999 Justice Department guidance, if the Senate twice fails to confirm a permanent replacement, the acting official may serve only seven more months even if the president files a third nomination.

Kopocis' first nomination expired, along with all other then-pending nominees, at the end of the 112th Congress in 2012. President Obama re-submitted the nomination in 2013, which started Stoner's second term as acting water chief. If Kopocis is not confirmed by the end of the year, Stoner's third, time-limited term would begin immediately.

Pending Nominees

The informed source says nominees like Kopocis' are being held up by controversy over EPA's policies, and the fear that support could hurt more than a dozen Democrats of the 20 that are up for re-election this fall. "If there's a vote between now and election day, there are 14 Democrats who would vote against" Kopocis because of his association with the controversial proposed rule on the scope of the Clean Water Act (CWA) proposed by EPA and the Army Corps of Engineers in April, says the informed source.

Those vulnerable Democrats likely include Sens. Mark Begich (AK), Kay Hagen (NC), Mary Landrieu (LA), Mark Pryor (AR), Jeanne Shaheen (NH), Mark Udall (CO), John Walsh (MT) and Mark Warner (VA).

According to one supporter of the proposed rule, Begich, Landrieu and Pryor were all anticipated to support an amendment that Republicans had planned to offer on the Corps' fiscal year 2015 appropriations bill before Democrats June 19 pulled it from committee vote over concerns that Republicans also had the votes to block EPA's greenhouse gas rules for power plants.

The informed source says Democrats may be similarly concerned that other EPA and environmental nominees could prompt debate over the administration's proposed environmental policies. Those pending nominees include Janet McCabe, EPA's deputy air chief who is currently acting head of the air office; John Cruden, the prospective head of the Department of Justice's (DOJ) environment & natural

resources division; Victoria Baecher Wassmer, nominated to serve as EPA's chief financial officer; and Thomas Burke, who would head the agency's research office.

An environmentalist says Republicans, like red-state Democrats, may be seeking to shore up support — or in some cases, at least limit fallout — in the midterm elections by attacking EPA's jurisdiction rule. After House Majority Leader Eric Cantor (R-VA) lost to Tea Party primary challenger David Brat, the GOP has new reason to be worried about losing votes for appearing insufficiently conservative, the source says. "Now that Cantor is gone, Republicans are more scared. And one place there is unity in the Republican Party is in opposing the [jurisdiction] rule," the environmentalist says.

That the debate has reached even Cruden, widely seen as a popular figure who former DOJ officials say could be easily confirmed based on his personal qualifications, shows how the confirmation process has become entangled with wider criticism of the administration and its policies, the informed source says.

"Anything that comes up for the Department of Justice, the Republicans are going to latch on to it and start attacking," the source continues.

In one sign of the possible difficulty Cruden faces, the Senate June 17 confirmed Peter Kadzick — who was nominated one day before Cruden — to lead DOJ's legislative affairs office. While Kadzick was nominated Jan. 6, was reported out of committee Jan. 16 and now confirmed, Cruden, who was nominated Jan. 7, did not receive a vote in committee until March 27, and his confirmation has been pending on the Senate calendar since then.

A state source says the Obama administration has done little, if anything, to pressure even strong EPA supporters in the Senate to hold a vote on Kopocis or other pending environmental nominees. "The silence is deafening. I'm not surprised that Ken is still waiting, given the lack of administration push on the nomination," the state source says, adding that the White House "is putting all its efforts into climate change, and it sucks all the air out of the environmental debate, so to speak."

The informed source adds that Kopocis in particular could see his nomination derailed permanently due to the delay.

Jurisdiction Rule

Republicans are framing any confirmation vote as a referendum on the CWA jurisdiction rule, which red-state Democrats are under severe pressure to oppose.

For instance, Sen. John Barrasso June 19 introduced a bill, S. 2496, that would bar completion of the rule and has so far accumulated 34 co-sponsors, and on March 5 six Republicans on the chamber's Environment & Public Works Committee (EPW) wrote in a "dear Colleague" letter that "A vote in favor of Mr. Kopocis should be viewed as a clear endorsement of the President's water policy."

Both the March 5 letter and a press release from Sen. John Barrasso (R-WY), the lead sponsor of S. 2496, cite a Senate vote last May where a majority of senators approved an amendment to the Water Resources Development Act that would have barred EPA from finalizing guidance similar to the agency's rulemaking effort.

Although 52 senators voted for the amendment, they fell short of the 60 votes needed for passage.

The GOP is linking confirmation votes to broader administration policies even when the nominees appear more acceptable to conservatives than the interim officials currently serving, the informed source says. Most prominently, acting water chief Stoner — formerly a prominent Natural Resources Defense Council (NRDC) official and litigator — has now served for almost three years while Kopocis' nomination has stalled.

"To my mind, Nancy Stoner is far worse from an industry perspective than Kopocis would be . . . there has been so much talk about her working on issues she advocated and litigated with NRDC," while Kopocis comes from a Congressional background, the informed source says. -- David LaRoss (dlaross@jwpnews.com *This e-mail address is being protected from spambots. You need JavaScript enabled to view it*)

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